



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,894	07/24/2006	Didier Courtois	3712036-00735	8671
29157	7590	11/25/2011		
K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690				
EXAMINER				
McCORMICK, MELENIE LEE				
ART UNIT		PAPER NUMBER		
1655				
NOTIFICATION DATE		DELIVERY MODE		
11/25/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

# Office Action Summary

**Application No.**

10/595,894

**Applicant(s)**

COURTOIS ET AL.

**Examiner**

MELENIE MCCORMICK

**Art Unit**

1655

**Period for Reply** -- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 November 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 1,2 and 4-19 is/are pending in the application.
- 5a) Of the above claim(s) 1,2,4-13 and 16-19 is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 14-15 and 18 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-806)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/01/2011 has been entered.

Claims 1-2 and 4-19 are pending.

Claims 1-2, 4-13 and 16-18 stand withdrawn from consideration.

**Claims 14-15 and 19 are presented for examination on the merits.**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Bosley et al. (US 4,086,368) with evidence provided by wikipedia.org.

Bosley et al. teach that one half inch carrot dice were dried at 180°F (i.e. 82.22°C) (see e.g. col 7, lines 12-21). As evidenced by wikipedia.org, carrots contain both fat and protein (see e.g. page 1). Therefore, the dried carrot dice disclosed by Bosley et al. contain a fat source and a protein source and read on an orally ingestible composition in the form of a food product comprising a fat source and a protein source wherein the carrots (i.e. raw *Daucus* plant material) have been processed at a temperature between 80°C and 105°C to obtain glucosamine in an amount greater than 150 mg/kg dry matter, as instantly claimed. In addition, nothing would preclude the use of the composition disclosed by Bosley et al. as a hair or skin care product since the composition disclosed by Bosley et al. meets the structural limitations of the instantly claimed skin or hair care product (i.e. it contains at least one raw *Daucus* plant material that is processed by drying at a temperature between 80°C to 105°C). While it is not disclosed that the drying processes taught by Bosley et al. is performed in order 'to obtain glucosamine in an amount greater than 150 mg/kg dry matter', since the raw *Daucus* plant material (i.e. carrot dice) is dried at a temperature squarely within the range instantly claimed, the product disclosed by Bosley et al. and the instantly claimed product would be the same since they are made in the same way. In addition, it should be noted that the instant claims do not explicitly state that the composition actually contains glucosamine in an amount greater than 150 mg/kg dry matter, only that the plant matter is processed in a manner 'to obtain' this amount of glucosamine. However, even if the claims did require that the composition contains this amount of glucosamine, the composition disclosed by Bosley et al. would be expected to contain this amount of

glucosamine since it is processed in the same manner as the instantly claimed composition.

With respect to the art rejection above, please note that “the patentability of a product does not depend upon its method of production. If the product in [a] product-by-process claim is the same as or obvious from a product of the prior art, [then] the claim is unpatentable even though the prior [art] product was made by a different process.” In re Thorpe, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 218 USPQ 289, 292 (Fed. Cir. 1983).

Therefore, the reference is deemed to anticipate the instant claims above.

### ***Conclusion***

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELENIE MCCORMICK whose telephone number is (571)272-8037. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melenie McCormick/  
Primary Examiner, Art Unit 1655